



In the Matter of:

MARK H. ALDASCH,

ARB CASE NO. 99-093

COMPLAINANT,

ALJ CASE NO. 99-STA-24

v.

DATE: July 21, 1999

COCA COLA ENTERPRISES,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant

Mark H. Aldasch, *Pro se*, Verona, New York

For the Respondent

Robert F. Goldman, Esq., *Miller, Martin, & Trabue*, Nashville, Tennessee

FINAL ORDER OF DISMISSAL

Administrative Law Judge Daniel F. Sutton issued a Recommended Order of Dismissal on June 14, 1999, in this case arising under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended, 49 U.S.C.A. §31105 (1997). This Recommended Order is now before the Administrative Review Board for review.

Pursuant to the request of Mark Aldasch, the complainant, the ALJ scheduled a hearing in this case for April 14, 1999, in Syracuse, New York. Recommended Order of Dismissal (R. D. & O.) at 1. At the request of the respondent, Coca Cola, the ALJ continued this hearing and issued an order rescheduling the hearing for May 26, 1999, at 9:00 a.m. *Ibid*. On the day of the rescheduled hearing, Coca Cola was represented by counsel who had traveled from Nashville, Tennessee, for the hearing with three Coca Cola officials who were to be called as witnesses. *Ibid*. Although the record indicates that the rescheduling order was mailed to Aldasch, neither he, nor any appointed representative, appeared at the hearing, nor did Aldasch or his representative notify the ALJ that he would not appear. *Ibid*.

Given Aldasch's unexplained failure to appear at the hearing, Coca Cola moved to dismiss the complaint. *Ibid.* In support of the motion, counsel for Coca Cola asserted that he had telephoned Aldasch's current employer, Swan Foods, at 9:30 a.m. on May 26, 1999, and a dispatcher told the counsel that Aldasch was at work and making a delivery. *Ibid.*

The ALJ issued an Order to Show Cause on May 28, 1999, giving Aldasch ten days to explain his failure to appear at the hearing. *Ibid.* Aldasch did not respond. *Ibid.* Concluding that, as provided in 29 C.F.R. 18.39(b), Aldasch had abandoned his request for a hearing, the ALJ issued his Recommended Order of Dismissal. *Id.* at 2.

Neither Aldasch, nor Coca Cola has responded to the Board's June 16, 1999 order permitting the parties to file a brief in response to the ALJ's Recommended Order of Dismissal. The record therefore fails to disclose circumstances explaining or excusing Aldasch's failure to appear at the scheduled hearing. Accordingly, the Board adopts the ALJ's Recommended Order of Dismissal and the complaint is hereby **DISMISSED**.

SO ORDERED.

PAUL GREENBERG

Chair

CYNTHIA L. ATTWOOD

Member